

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
In re : Case No. 18-12738 (MG)
:
:
PURSUIT HOLDINGS (NY) LLC, : (Chapter 11)
:
Debtor. :
:
----- X

**MEMORANDUM OF LAW OF THE UNITED STATES TRUSTEE IN SUPPORT
OF MOTION TO CONVERT OR TO DISMISS THIS CHAPTER 11 CASE**

TO THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE:

William K. Harrington, the United States Trustee for Region 2 (the “United States Trustee”), does hereby make this motion (the “Motion”) pursuant to 11 U.S.C. § 1112(b) for an order converting or dismissing this Chapter 11 case. In support thereof, the United States Trustee represents and alleges as follows:

Introduction

Cause exists to convert or dismiss this case. Because this is the second bankruptcy case for Pursuit Holdings (NY) LLC (the “Debtor”), the Debtor knew, or should have known, that it is required to timely file Bankruptcy Schedules and a Statement of Financial affairs. The Debtor, however, has neither (i) complied with Bankruptcy Code § 521(a) and filed Bankruptcy Schedules or a Statement of Financial Affairs within the 14 day time period set forth in Bankruptcy Rule 1007(c), or (ii) requested an extension of time to file such pleadings. Accordingly, pursuant to Bankruptcy Code § 1112(b)(4)(F), the Court should convert or dismiss this case. Because the Debtor is a serial filer and the affairs of

the Debtor are unclear, the United States Trustee submits conversion to Chapter 7 to permit a trustee to determine if there are assets to administer is in the best interest of this estate and its creditors.

Facts

General Background

1. The Debtor commenced this case by filing a bare bones voluntary petition on September 12, 2018. ECF No. 1.
2. The Debtor has continued in possession of its assets.
3. The United States Trustee was unable to form a committee of unsecured creditors in this case.

The Debtor has Not Filed Schedules or Statement of Financial Affairs

4. As of the date hereof, the Debtor has not filed its Bankruptcy Schedules or a Statement of Financial Affairs. See Declaration (the “Declaration”) of Paul Schwartzberg at ¶ 2, annexed hereto as Exhibit 1. The Debtor has not sought an extension of time to file its Bankruptcy Schedules or a Statement of Financial Affairs. Id. at ¶ 3.

Prior Bankruptcy Cases

5. This is not the first bankruptcy case filed by the Debtor.
6. On February 20, 2017, the Debtor commenced a bankruptcy case in the District of Delaware and was assigned case number 17-10389 (CSS)(the “Delaware Bankruptcy”).
7. The Delaware Bankruptcy case was commenced with the filing of a bare bones petition, without Bankruptcy Schedules or a Statement of Financial Affairs. Delaware Bankruptcy Case ECF No. 1.

8. On March 7, 2017, the United States Trustee moved to dismiss the Delaware Bankruptcy case because, among other reasons, the Debtor failed to file Bankruptcy Schedules or a Statement of Financial Affairs. Delaware Bankruptcy ECF No. 9.

9. The Debtor subsequently joined the United States Trustee's motion to dismiss. Delaware Bankruptcy ECF No. 24.

10. On March 27, 2017, the Delaware Bankruptcy Court granted the United States Trustee's motion and dismissed the Debtor's Delaware Bankruptcy Case. Delaware Bankruptcy ECF No. 26.

Argument

Cause Exists to Convert or Dismiss this Case

Section 1112(b) of the Bankruptcy Code describes a variety of factors which may constitute "cause" for the conversion of a Chapter 11 case to a Chapter 7 case or dismissal of a case. See 11 U.S.C. § 1112(b). Under this provision, the court may find cause in the following circumstances, among others:

- (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter.

See 11 U.S.C. § 1112(b)(4)(F).

The circumstances listed in section 1112(b), however, are not exhaustive, and courts are free to consider other factors. In re BH S&B Holdings, LLC, 439 B.R. 342, 346 (Bankr. S.D.N.Y. 2010). The bankruptcy court has wide discretion to determine if cause exists and how to ultimately adjudicate the case. In re The 1031 Tax Group, LLC, 374 B.R. 78, 93 (Bankr. S.D.N.Y. 2007); cf. In re C-TC 9th Ave. P'ship, 113 F.3d 1304, 1311 (2d Cir. 1997) (bankruptcy Court may dismiss

Chapter 11 filing on motion or sua sponte upon a finding that the filing was in “bad faith” even without consideration of factors set out in section 1112(b)). Once a party establishes cause, the burden is on the respondent to demonstrate that dismissal or conversion is not in the best interest of the estate. In re Halal 4 U LLC, 2010 WL 3810860 * 2 (Bankr. S.D.N.Y. 2010).

Section 1112(b) requires a court to convert or dismiss a case if the movant establishes “cause.” 11 U.S.C. § 1112(b)(1). As set forth above, the United States Trustee has demonstrated cause under § 1112(b)(4)(A).

The Debtor Has Not Filed Bankruptcy Schedules or Statements of Financial Affairs

The Debtor was required to file bankruptcy schedules and a statement of financial affairs within 14 days after filing the Petition. See 11 U.S.C. § 521(a)(1)(B); Bankruptcy Rule 1007(c). The Debtor knew, or should have known that it must file such pleadings, as its prior bankruptcy case in Delaware was dismissed due to, among other things, the Debtor’s failure to file Bankruptcy Schedules and a Statement of Financial Affairs.

As of the date hereof, the Debtor has not filed bankruptcy schedules or a statement of financial affairs. See Declaration at ¶ 1. This failure constitutes cause for conversion or dismissal of this case. 11 U.S.C. § 1112(b)(4)(F).¹

This Case Should Be Convert to Chapter 7

As set forth above, cause exists to convert or dismiss this case. Because the Debtor is a serial filer, and because it is unclear if the Debtor has assets for a Chapter 7 Trustee to administer,

¹ The United States Trustee notes that although Bankruptcy Code § 341(a) meeting of creditors is scheduled for October 23, 2018, as of the date hereof, the Debtor has not provided the United States Trustee with proof of insurance regarding any of its assets. See Declaration at ¶ 4. Failure to provide proof of insurance also constitutes cause to convert or dismiss a case. See 11 U.S.C. § 1112(b)(4)(C).

the United States Trustee submits that conversion of this case to Chapter 7 to allow a trustee to investigate the Debtor's affairs and determine if there are assets available to distribute to creditors is in the best interest of the estate and the Debtor's creditors.

WHEREFORE, the United States Trustee respectfully requests that the Court enter an order converting or dismissing this Chapter 11 case, and granting such other and further relief as may be deemed just and proper.

Dated: New York, New York
September 27, 2018

Respectfully submitted,

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE, REGION 2

By: /s/ Paul K. Schwartzberg
Paul K. Schwartzberg
Trial Attorney
201 Varick Street, Room 1006
New York, NY 10014
Tel. No. (212) 510-0500